

REMARKS

The Office Action of October 19, 2004 has been received and considered. In the Office Action, claims 1-4 and 6-11 were rejected under either 35 U.S.C. §102 or 35 U.S.C. §103. Claim 5 was objected to as being allowable if rewritten in independent form. Claim 12 was allowed.

Claims 1, 9 and 11 have been amended. Claims 4, 8 and 10 have been cancelled. Claims 1-3, 5-7, 9, 11 and 12 remain pending. Reconsideration and allowance of the instant application are respectfully requested.

Claims 1-3, 5 and 6 were rejected under 35 USC 102(b) as being anticipated by WO 01/17411 to Tavivian (WO '411). Claim 5 was indicated to be allowable if rewritten in independent form. Accordingly, the listing of claim 5 in the rejection under 35 U.S.C. §102(b) is considered a typographical error. Hence, claim 5 will not be treated in the response to the rejection because it is allowable over the prior art.

Claim 1 has been amended to include the recitations from original claims 4, 8, 10 and 11. Each of these four original claims was rejected under 35 U.S.C. §103(a) because WO '411 clearly does not teach their recited profile. Therefore, it only follows that WO '411 cannot now anticipate amended claim 1 since it did not anticipate original claims 4, 8, 10 and 11. Specifically, WO '411 does not disclose, at least, the operating life, tensile strength and percent elongation of the middle segment recited in amended claim 1. Withdrawal of the rejection is requested.

Claims 4 and 6-11 were rejected under 35 U.S.C. §103(a) as being unpatentable over WO '411 to Tavivian. Claims 4, 8 and 10 have been cancelled as discussed above. Accordingly, the rejection of these claims will be addressed as it applies to claim 1.

It was asserted in the Office Action that the profile recited in these claims would have been obvious to one of ordinary skill in the art. Case law discussing the optimization of result effective variables was cited in the Office Action to support the conclusions reached by the Examiner. However, the case law is not applicable to the issue presented by amended claim 1. The issue in the present application is whether or not the prior art teaches the recited profile having a middle segment with the specific combination of life cycle, tensile strength and percent elongation recited in claim 1.¹ As discussed below, the prior art does not teach the recited profile or render it obvious.

Aharon Tavivian is the inventor in both the instant application and WO 01/17411. He has expressly stated that the specification of WO '411 does not disclose or suggest a flexible, hinged panel connector that flexes in a first swivel direction and a second, opposite swivel direction as recited in claim 1. Therefore, it is submitted that one of ordinary skill would not have been motivated to modify the profile disclosed in WO '411 to include a more flexible middle segment because the second sense of swivel was not contemplated in the WO '411 disclosure.

Nevertheless, even if it would have been obvious to modify the profile of WO '411 to include a more flexible middle segment, the prior art does not teach modifying the profile of WO

¹ The recitation of these elements in combination is beyond the mere optimization of a result effective variable.

‘411 to arrive at a profile having a flexible middle segment with the specific operating life, tensile strength and percent elongation recited in amended claim 1.

Amended claim 1 recites that the profile includes a flexible middle segment having (1) an operating life in excess of 10,000 bend cycles; (2) a tensile strength of about 2750 lbs/sq. in. and (3) an elongation of about 350%. WO ‘411 does not disclose that its middle segment includes a flexible material having each of these elements. Additionally, no prior art teaching these recited elements has been applied. Since no publication has been cited to disclose what WO ‘411 lacks, the prior art fails to disclose a profile having a middle segment that has an operating life of 10,000 bend cycles, a tensile strength of about 2750 lbs/sq. in. and an elongation of about 350%.

It is not a mere optimization of result effective variables to arrive at the recited profile. The art does not disclose modifying any one or all of the operating life, tensile strength and percent elongation of the profile disclosed in WO ‘411 to arrive at the recited profile. Additionally, it does not disclose the specific combination of these elements recited in claim 1 or why one of ordinary skill in the art would arrive at this specific combination of elements. Accordingly, the prior art does not render claim 1 obvious. Withdrawal of the rejection is requested.

Claims 6 and 7 were rejected under 35 U.S.C. §103(a) as being unpatentable over Tavivian (WO ‘411). However, the prior art does not provide a teaching for the dimensions of the profile recited in these claims. No art having a profile with the recited dimensions has been cited. Moreover, the prior art fails to provide a suggestion for modifying the profile of WO ‘411 to arrive at the profile having the dimensions recited in claims 6 and 7.

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Additionally, the dimensions recited in claims 6 and 7 are not result effective variables as defined by the cases cited in the Office Action. For example, WO '411 does not teach flexion in the recited second sense of swivel as discussed above. As a result, WO '411 does not disclose dimensions that can be used to achieve the movement in the second sense of swivel. Since no such dimensions are taught for flexion in a second sense of swivel and since the prior art does not teach a range of dimensions for achieving motion in a second sense of swivel, no optimum range for such dimensions would have been obvious to one of ordinary skill in the art. Withdrawal of the rejection is requested.

All rejections having been addressed, applicant respectfully submits that the instant application is in condition for allowance, and respectfully solicits prompt notification of the same. If any issues remain, the Examiner is requested to contact the undersigned at the below listed telephone number.

It is believed that no fee is required for this submission. If any fees are required or if an overpayment is made, the Commissioner is authorized to debit or credit our Deposit Account No. 19-0733, accordingly.

Respectfully submitted,
BANNER & WITCOFF, LTD.

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